

Settlement program announces survey results

In August 2002, our Franchise Tax Board Settlement Program administered a survey to taxpayers and tax practitioners who had contact with the program between 2000 and 2002. From that survey we learned that our settlement program is doing a good job of listening to its customers and working with them to find solutions for their tax problems.

We also learned that at times the process takes too long, particularly the response times between the Chief Counsel approval and the Attorney General and Board approval steps.

Revenue and Taxation Code Section 19442, gives us the authority to settle civil tax matters in dispute that are subject of protests, appeals, or refund claims. Our settlement program is responsible for the negotiation of settlements of civil matters in dispute consistent with a reasonable evaluation of the costs and risks associated with the litigation of these matters.

The settlement of litigation cases and audits in progress are statutorily excluded from our settlement program. The settlement program is also distinct from our Offer in Compromise Program, which assists taxpayers with undisputed tax liability matters.

In the survey we asked customers questions aimed at finding out how effective our settlement program is in meeting their needs. The responses from the survey were generally very positive and indicated that the program is effective. The survey also identified areas within the program that could be improved. Further details about the survey are available on our Website.

Here are some of the key survey results:

Overall impression of the settlement program

- 97 percent indicated that they were treated courteously.
- 92 percent indicated that the settlement process was clearly explained.
- 91 percent indicated that negotiations were conducted in a professional manner.
- 90 percent indicated that contacts were timely.
- 89 percent were satisfied or very satisfied with the settlement process.
- 88 percent indicated that they would use the settlement process again. (Four percent indicated that they would not use the process again; eight percent had no opinion).
- 83 percent indicated that nine months was an adequate time for settlements with occasional extensions when needed. (Of these, five percent wanted shorter periods).

Comparison with other dispute resolution processes

- 56 percent indicated that the settlement process was better than the appeals process.
- 41 percent indicated that the settlement process was the same as the appeals process.
- 3 percent indicated that the settlement process was worse than the appeals process.
- 61 percent indicated that the settlement process was better than the protest process.
- 38 percent indicated that the settlement process was the same as the protest process.
- 1 percent indicated that the settlement process was worse than the protest process.

Settling audits

The respondents split as to whether there should be an opportunity to settle audits: 42 percent said yes, 33 percent said no, and 25 percent had no opinion or left the answer blank.

Program's best features

The best features of the settlement program are:

- Opportunity to consider pros and cons and resolve accordingly.
- Opportunity to discuss issues with knowledgeable staff.
- Response time is often quicker than in other processes.
- High level of professionalism, knowledge and preparation exhibited by the settlement staff.

For more information about our Settlement Program refer to FTB Notice 2003-2, dated March 14, 2003, available on our Website.

http://www.ftb.ca.gov/legal/notices/2003/2003_02.pdf

Suggestions for Improvements

We received numerous comments and suggestions on how we could improve the Settlement Program. Here are a few of them:

1. Improve the timeliness of our responses to settlement customers:

Settlement Program response:

We scored well with regard to timeliness of responses, however, 10 percent of the respondents indicated that we could improve the timeliness of our responses. Some of you indicated that we contacted taxpayers relatively late in the process. Here are some of the steps we're taking to improve in this area:

- a. *Computational and tax effect resolutions are can take several months. To speed up the process we will review all cases to determine the tax effect for all issues and to resolve computational problems. If these cannot be resolved in a reasonable period of time (30 days), we will reject the case for further development. The case may be returned to the Settlement Program at a later date if the taxpayer requests.*
 - b. *Sometimes nine months is not enough time to resolve the case so we will seek extensions where there is valid reason for one.*
 - c. *When assigning cases we will monitor assigned cases to ensure that the taxpayer is contacted within 90 days of the case being assigned.*
2. We should offer settlement conferences outside of Sacramento.

Settlement Program response:

We cannot offer conferences outside of Sacramento due to budgetary constraints. However, we will consider this when funds are available.

3. Lessen the time between Chief Counsel approval and the Attorney General and Board approval

Settlement Program response:

Solutions for this problem are limited because of the statutory time limits. With regard to the Attorney General's response time, our policy is to send cases to the Attorney General's office as soon as practicable. However, in consideration for the Attorney General's workload, we allow a week between mailings.

To speed up the Board approval process we've implemented a monthly mailings schedule, however since it is difficult to predict when the Board will meet this process still takes a minimum of about 60 days (because of the 10-working-day review period plus the 45 days established by statute). Changes in this process would require a legislative change, which is often a long and difficult process. We will continue to look into shortening the review period and the 45-day period as well as the possibility of increasing mailings to the Board.

4. Combine our Settlement and Offer in Compromise (OIC) programs

Settlement Program response:

Collectibility and ability-to-pay issues for these two programs are different and have different procedures and concerns. We need to further study this alternative to fully consider the repercussions.

5. Franchise Tax Board should be willing to concede more and place more emphasis on taxpayer's positions. Staff should be more impartial and have more flexibility to settle at lower percentages.

Settlement program response:

Despite a general belief by some taxpayers to the contrary, we do consider low settlements if they are fair and represent the true risks of the case.

6. The Settlement Program should be able to totally concede on settlement issues.

Settlement Program response:

As part of settlements, we do concede one issue for another. In addition, in appropriate cases, if we believe full concession is in order, we do not settle but will either return the case to its pre-settlement status with a recommendation or will work with the other programs involved to resolve the matter.

7. Make better use of technology.

Settlement Program response:

This suggestion relates to use of emails for communications with taxpayers, and electronic submissions of information. Security is the big concern and we are working on this issue. We do scan important documents into the electronic case file, and we do fax documents in order to expedite the process. We also conduct some generic communications (without identification of taxpayer) through email.

8. Set up established timelines.

Settlement Program response:

We are developing a procedure for providing taxpayers with timelines for each step in the process.

9. Reduce the levels of review.

Settlement Program response:

Reducing the levels of review is difficult. The Attorney General and Board approvals are statutorily mandated. Statutory changes in this area are unlikely to be approved. Managerial review is also often necessary in terms of quality control and consistency. Furthermore, managerial review is usually completed in a short period of time (two-three days) and helpful in achieving a favorable response from the Attorney General and the Board.

Suggestion # 10: Use resolution procedures that are more like the Internal Revenue Service's. Some of the specific IRS procedures mentioned include:

- a. Settle audits
- b. Review all facts and resolve on the merits, if appropriate
- c. Consider collectibility and ability to pay
- d. Use non-attorneys where taxpayers are not represented
- e. More flexibility (lower settlements, complete concessions allowed, minimum approval processes)

Settlement Program response:

Items a, b, c, and e are addressed above. Regarding item d, we are currently implementing procedures for allowing taxpayers to use non-attorneys.

Conclusion

The results of the survey were very positive, and we were happy to learn that we generally seem to be meeting our customer needs. However, some valuable comments and feedback were received to help us assess areas where better service could be provided. In the areas where it is possible, will continue to try to improve the program. We hope to follow up our survey in a few years for further feedback. If you should have any comments, suggestions or questions about the settlement program, send a fax to (916) 845-3316 or call the Settlement Bureau message line at (916) 845-5034.